

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation into the ratemaking implications for Pacific Gas and Electric Company (PG&E) pursuant to the Commission's Alternative Plan for Reorganization under Chapter 11 of the Bankruptcy Code for PG&E, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Company, Case No. 01-30923 DM.

Investigation 02-04-026  
(Filed April 22, 2002)

**ADMINISTRATIVE LAW JUDGE'S PRELIMINARY RULING  
ON NOIs TO CLAIM INTERVENOR COMPENSATION  
FILED BY TURN AND FCTR**

**1. Summary**

The Utility Reform Network (TURN) is preliminarily determined to be eligible to claim an award for intervenor compensation. Absent a showing of significant financial hardship, no preliminary ruling is necessary regarding the eligibility of the Foundation for Taxpayer and Consumer Rights (FTCR) to claim an award for intervenor compensation, but this Preliminary Ruling addresses issues raised by FTCR's notice of intent (NOI) to claim intervenor compensation.

**2. Background and Eligibility Requirements**

The intervenor compensation program is set forth in Public Utilities Code Sections (§§) 1801-1812, and implemented by several decisions, including

Decision (D.) 98-04-059 (79 CPUC2d 628), D.99-02-039, and D.02-06-070.<sup>1</sup> The program allows eligible public utility customers to receive compensation for reasonable fees and costs of participation in any Commission proceeding in which they are found to have made a substantial contribution. A customer who intends to seek an award of compensation must file and serve an NOI to claim compensation within 30 days after the prehearing conference (PHC) or, if no PHC is held, as determined by the Commission. (§1804(a)(1).)

Customer:

“...means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the Commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant its articles of incorporation or bylaws to represent the interests of residential customers...” (§1802(b).)

These are generally referred to as Category 1, 2, and 3 customers, respectively.

An NOI must include the following:

- a. Customer: A showing that the party is a customer as defined in Section 1802(a). (D.98-04-059, mimeo., pages 29-30; Conclusion of Law 5 at page 88; Ordering Paragraph 9 at page 92.)
- b. Planned Participation: A statement of the nature and extent of the customer’s planned participation as far as it is possible to set out when the notice is filed. (§1804(a)(2)(A)(i).)
- c. Estimate of Compensation: An itemized estimate of the compensation that the customer expects to request, given the

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<sup>1</sup> All statutory references, unless noted otherwise, are to the Public Utilities Code.

likely duration of the proceeding as it appears at the time.  
(§1804(a)(2)(A)(ii).)

An NOI may include a showing that participation would pose a significant financial hardship. Alternatively, that showing must be included in the request for compensation. (§1804(a)(2)(B).) Significant financial hardship:

“...means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.” (§1802(g).)

When an NOI includes the customer’s showing of significant financial hardship, the Administrative Law Judge, in consultation with the Assigned Commissioner, must issue a “preliminary ruling.” (§1804(b)(1).) The ruling must address whether the customer will be eligible for an award of compensation, and whether a showing of significant financial hardship has been made. With or without a showing of significant financial hardship, a ruling may address issues raised by an NOI. (§1804(b)(2).)

### **3. TURN’s NOI**

#### **3.1. Timeliness of NOI**

No PHC has been held. By Scoping Memo and Ruling dated July 17, 2002, customers intending to seek intervenor compensation were directed to file and serve an NOI within 30 days of the date of the Ruling. TURN filed its NOI on August 12, 2002. TURN’s NOI is timely. No responses in support or opposition to TURN’s NOI were filed.

#### **3.2. Customer**

TURN states that it is a non-profit customer advocacy organization with a long history of representing the interests of residential and small commercial customers before the Commission. TURN asserts that it “is a ‘group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential ratepayers.’” (NOI, page 1, footnote 2.) That is, TURN contends it is a Category 3 customer.

The NOI for a group must include a copy of the portion of its articles of incorporation or bylaws showing that it is authorized to represent residential customers, or provide a reference to that authorization when it was presented in a previous filing. (D.98-04-059, mimeo., page 30.) TURN’s NOI states that TURN provided the relevant portion of its articles of incorporation in prior NOIs (i.e., Application (A.) 98-02-017, A.99-12-024), and that its articles of incorporation have not changed since the time of those earlier submissions.

Groups must also indicate in their NOI “the percentage of their membership that are residential ratepayers.” (D.98-04-059, Finding of Fact 12 at mimeo., page 83; Ordering Paragraph 9.) TURN states that it has approximately 30,000 dues paying members, of whom TURN believes the vast majority are residential ratepayers. TURN asserts that it does not poll its members in a manner that would allow a precise breakdown between residential and small business members, and a precise percentage is not available.

TURN satisfactorily states how it meets the definition of customer, and complies with other Commission requirements. TURN is a Category 3 customer.

### **3.3. Planned Participation**

TURN states that has already become an active party, and intends to maintain that status. TURN reports that it filed and served comments responding to the Order Instituting Investigation (OII), plus further comments

and a motion for hearing. TURN asserts that it plans to continue its participation, whether through hearings (if ordered) or whatever other procedural vehicles the Commission makes available. TURN indicates that it has also participated in the federal bankruptcy proceeding, and intends to continue participating with an emphasis on understanding and highlighting the potential rate impacts of the competing plans of reorganization (PORs) and other proposals. TURN concludes that the extent of its participation will necessarily depend on the resources available at the time its involvement is required.

TURN satisfactorily states the nature and extent of its planned participation as far as it is possible to set out when the notice was filed.

### **3.4. Itemized Estimate of Compensation**

TURN says it currently estimates the following budget:

Personnel/Category	Hourly Rate	Hours or Cost	Total Cost
Randolph Wu (attorney)	\$385	100 hours	\$38,500
Michel Florio (attorney)	\$385	50 hours	\$19,250
Robert Finkelstein (attorney)	\$340	50 hours	\$17,000
Matthew Freedman (attorney)	\$230	50 hours	\$11,500
Margaret Meal (consultant)	\$200	100 hours	\$20,000
Expenses		\$3,750	\$3,750
<b>TOTAL</b>			<b>\$110,000.00</b> <b>110,000</b>

TURN cautions that this estimate is dependent upon the course of the proceeding and the Commission's final decision. TURN states that the reasonableness of the hourly rates requested for its representatives and expert witnesses will be addressed in its request for compensation, if one is ultimately filed.

TURN satisfactorily presents an itemized estimate of the compensation it expects to request.

TURN also states that it may seek recovery, through a request for compensation filed in this proceeding, of all or some portion of the reasonable fees of advocates and expert witnesses, along with other reasonable costs, associated with its work in the federal bankruptcy court proceeding. TURN cites page 17 of D.02-06-070 in support of including expenses for participation in the federal forum as part of its intervenor compensation claim in this proceeding. In addition, TURN states that it performed extensive analysis of the Pacific Gas and Electric Company (PG&E) POR, which was reflected in TURN's filing in this matter even though the analysis preceded the date of the Commission's OII. TURN states that it may seek recovery of all or part of the costs associated with that analysis as part of any request for compensation. TURN estimates that its reasonable fees for advocates, fees for expert witnesses, and other costs incurred for its work in the federal bankruptcy proceeding and pre-investigation analysis, totals approximately \$200,000 to date.

A preliminary ruling may address a customer's "unrealistic expectation for compensation." (§1804(b)(2).) TURN fails to adequately explain the basis for a potential claim of \$200,000 for expenses and costs to date, or what they might be in total for expenses and costs after the date of the NOI. For example, TURN fails to itemize the numbers of hours and hourly rate for identified persons or job classifications of persons. Absent justification, TURN's estimate reflects an unrealistic expectation for compensation regarding this portion of TURN's work. As must each intervenor, however, TURN must precisely and fully justify any request for compensation that it may later submit, and may at that time justify its claim.

Further, TURN should note that the “circumstances under which we can compensate work done before other entities are narrow.” (D.02-06-070, mimeo., page 14.) TURN should review the circumstances previously identified by the Commission, and, in any subsequent compensation request, address whether or not those circumstances apply in this case.

### **3.5. Significant Financial Hardship**

TURN states that it received a finding of significant financial hardship by Ruling dated December 19, 2001 in A.01-09-003.<sup>2</sup> According to TURN, this proceeding commenced within one year of the date of that finding, and a rebuttable presumption of its significant financial hardship applies. (§1804(b)(1).)

TURN is correct. TURN's significant financial hardship is established by unopposed rebuttable presumption.

## **4. FTCR's NOI**

### **4.1. Timeliness of NOI**

FTCR filed and served its NOI on August 12, 2002. FTCR's NOI is timely. No responses in support or opposition to FTCR's NOI were filed.

### **4.2. Customer**

#### **4.2.1. Category 3**

FTCR says that it is a nationally-recognized, California-based, non-profit education and advocacy group organized under Section 501(c)(3) of the Internal Revenue Code. FTCR reports that it is authorized pursuant to its articles of incorporation and bylaws to conduct activities on consumer and public-interest issues, particularly with respect to consumer-protection and government-reform. That is, FTCR contends it is a Category 3 customer. FTCR says copies of its articles of incorporation and bylaws will be provided with FTCR's request for compensation.

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<sup>2</sup> A.01-09-003 is the application of Pacific Gas and Electric Company in the 2001 Annual Transition Cost Proceeding for the record period July 1, 2000, through June 30, 2001.



As noted above, the NOI for a group must include a copy of the portion of its articles of incorporation or bylaws showing that it is authorized to represent residential customers, or provide a reference to that authorization when it was presented in a previous filing. Similarly, the NOI must indicate the percentage of its membership that are residential ratepayers. FTCR's NOI fails to do so.

As a result, it is not possible at this time to determine whether or not FTCR is a Category 3 customer for purposes of intervenor compensation. FTCR may include a copy of its articles of incorporation or bylaws, plus an estimate of the percentage of its membership that are residential ratepayers, with its request for compensation, and seek at that time to satisfy the requirements to be found a Category 3 customer. Absent a compelling showing at that time, however, FTCR is not a Category 3 customer.

#### **4.2.2. Categories 1 and 2**

FTCR states that it is a customer as defined by all three criteria of §1802(b). FTCR indicates that it is neither a government agency nor established by or formed by a government agency for the purpose of participating in Commission proceedings.

To the extent FTCR is a Category 1 customer, however, FTCR does little more than assert it is a Category 1 customer. NOIs must do more than simply assert status. A Category 1 customer, for example, must show that it is itself a utility customer, and that it represents more than its own narrow customer self-interest. (D.98-04-059, mimeo., page 28.) FTCR should clearly state facts in any subsequent compensation request that establish whether or not it is a Category 1 customer. Absent a convincing showing at that time, FTCR is not a Category 1 customer.

To the extent FTCT is a Category 2 customer, FTCT fails to identify “the residential customer or customers that authorized him to represent that customer.” (D.98-04-059, mimeo., page 30.) This is especially important with regard to making an assessment of whether or not the customer has a significant financial hardship. If FTCT later files an intervenor compensation request as a Category 2 customer, FTCT should clearly state in that request the name of each residential customer who authorizes FTCT to be his or her representative. Absent a convincing showing at that time, FTCT is not a Category 2 customer.

#### **4.3. Planned Participation**

FTCT describes its participation as including comments filed on or about May 9, 2002. FTCT says it filed comments which dispute the Commission’s jurisdiction to hold this proceeding, and to adopt and submit the Commission’s POR for PG&E to the bankruptcy court. FTCT points out the OII followed FTCT filing a proceeding in the California Supreme Court against the Commission, in which FTCT challenged the Commission’s adoption and advocacy of a POR for PG&E. FTCT says its May 9 comments decline to comment on the wisdom of the Commission’s POR, but advise the Commission that FTCT will continue to pursue judicial review of the Commission’s action. FTCT characterizes its planned participation at this point as monitoring this OII, participating as FTCT sees fit, and seeking judicial review as warranted.

FTCT satisfactorily states the nature and extent of its planned participation as far as it is possible to set out when the notice was filed.

FTCT should review D.02-06-070 before later submitting a claim for compensation. In particular, FTCT should note that the “circumstances under which we can compensate work done before other entities are narrow.”

I.02-04-026 BWM/tcg

(D.02-06-070, mimeo., page 14.) FTCR's claim should address whether or not those circumstances apply to its participation in this case.

#### 4.4. Itemized Estimate of Compensation

The NOI states that: “FTCR notes that it intends to seek compensation for its costs of obtaining judicial review, including but not limited to its costs in connection with Supreme Court case number No. S1058097.” (NOI, page 4.)

FTCR estimates it will incur expenses in approximately the following amounts:

Personnel/Category	Hourly Rate	Hours or Cost	Total Cost
Strumwasser & Woocher, partners	\$425	250 hours	\$106,250
Senior Associates	\$315	145 hours	\$45,675
Junior Associates	\$225	55 hours	\$12,375
Paralegals	\$110	100 hours	\$11,000
Legal Expenses		\$16,000	\$16,000
FTCR Officers	\$425	100 hours	\$42,500
FTCR expenses		\$4,000	\$4,000
<b>TOTAL</b>			<b>\$237,800.00</b> <b>237,800</b>

FTCR says it will provide time records, expense records, and justification for hourly rates in a request for an award of compensation.

FTCR satisfactorily presents an itemized estimate of the compensation it expects to request.

A preliminary ruling may address a customer’s “unrealistic expectation for compensation.” (§1804(b)(2).) FTCR’s NOI does not itemize its compensation estimate between work performed before the Commission, and work performed before other entities. As also pointed out above for TURN regarding compensation, FTCR should note that the “circumstances under which we can compensate work done before other entities are narrow.” (D.02-06-070, mimeo.,

page 14.) FTCCR should review the circumstances previously identified by the Commission and, in any subsequent compensation request, address whether or not those circumstances apply in this case.

FTCCR's NOI does not contain an adequate explanation showing that the circumstances apply here. Thus, absent an adequate explanation at this time, FTCCR's estimate reflects an unrealistic expectation for compensation. As must each intervenor, however, FTCCR must precisely and fully justify any request for compensation that it may later submit, and may at that time justify its claim.

#### **4.5. Significant Financial Hardship**

FTCCR requests "a finding of significant financial hardship as defined in Public Utilities Code section 1802, subdivision (g)." (NOI, page 2.) At the same time, FTCCR states that "[p]ursuant to Public Utilities Code section 1804, subdivision (a)(2)(B), FTCCR will make its showing that participation in the proceeding will pose a significant financial hardship when FTCCR files its request for an award." (NOI, page 4.)

Absent the requisite showing, it is not possible at this time to grant FTCCR's request. That is, FTCCR has not demonstrated that participation will cause it to suffer significant financial hardship as defined in §1802(g).

FTCCR may make its showing of significant financial hardship in its compensation request, as permitted by §1804(a)(2)(B). Before doing so, FTCCR should review the Commission's standards for such showing. For example, a participant (Category 1) must provide his or her own financial information. A representative authorized by a customer (Category 2) must submit evidence of the significant financial hardship for each represented customer. Significant financial hardship might be in the form of a financial statement for each represented customer, or other compelling showing. A representative

authorized by a group or organization (Category 3) must show that the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding. (See, for example, D.98-04-059, mimeo., pages 36-37; also see Ruling dated January 28, 2002 in A.01-07-004, Section 2.2.)

## **5. Underrepresentation, Fair Determination and Duplication**

The Commission has addressed review standards that pertain to the participation statements required by Section 1804(a)(2)(A). (D.98-04-058, mimeo., pages 25, 31-33.) These standards are underrepresentation, fair determination, and duplication.

### **5.1. Underrepresentation**

The intent of Section 1801.3(f) is to allow intervenor compensation only for those customer interests which would otherwise be underrepresented. (D.98-04-059, mimeo., p. 25.) TURN and FTCR each acknowledge that the other group is participating in the proceeding, and represents the interests of residential and small commercial customers. Other groups participating in the proceeding that might also generally represent residential and small commercial customers are Aglet Consumer Alliance, Consumers Union, Office of Ratepayer Advocates, Latino Issues Forum, San Luis Obispo Mothers For Peace, and the Greenlining Institute. Nonetheless, TURN and FTCR assert that each has brought different issues, raised different policies, and emphasized different aspects of the case. TURN claims that having more than one intervenor represent the interests of more than 4 million residential and small business customers should not deter the Commission from finding that those interests would otherwise be underrepresented. The stakes are simply so high, according to TURN, that the

Commission should welcome the broadest array of consumer interests to play an active role.

FTCR states that it has emphasized the issue of legal authority, and is letting others take the lead on technical and economic issues. TURN reports that the more data-intensive ratemaking analysis presented in its comments dated May 10, 2002 demonstrates that TURN's work is unlikely to be duplicated by the efforts of others. Both FTCR and TURN pledge to tailor their participation, and coordinate with aligned parties, to avoid undue duplication whenever practical.

TURN and FTCR successfully demonstrate for the purpose of a preliminary ruling that they will represent interests that would otherwise be underrepresented. Each, however, must address the matter of underrepresentation in any subsequent compensation request based on the facts of the actual proceeding. Failure to do so will place TURN and FTCR at risk for receiving reduced or no compensation.

## **5.2. Fair Determination**

In addition to considering whether the interests represented by an intervenor are underrepresented, rulings on eligibility must carefully consider other factors, such as whether participation is "necessary for a fair determination of the proceeding." (D.98-04-059, mimeo., p. 31.) According to the Commission, this means that compensation will not be awarded where the customer has argued issues that are irrelevant, outside the scope of the proceeding, or beyond the Commission's jurisdiction.

TURN and FTCR successfully show for the purpose of a preliminary ruling that their participation will be within the scope of the proceeding and is reasonably necessary for a fair determination of the proceeding, as far as can be

known at this time. This includes work before the Commission in this proceeding, but may or may not include work before other entities.

### **5.3. Duplication**

The Commission has also stated that participation for which compensation is sought should not duplicate that of similar interests otherwise adequately represented. (D.98-04-059, mimeo., pp. 31-2.) TURN and FTCR pledge to coordinate with aligned parties to avoid duplication, and successfully show for the purpose of a preliminary ruling that their participation will not duplicate that of similar interests otherwise adequately represented. TURN and FTCR must, however, address this issue in any subsequent compensation request.

#### **IT IS PRELIMINARILY RULED** that:

1. The Utility Reform Network (TURN) is a Category 3 customer, and has demonstrated significant financial hardship.
2. TURN states the nature and extent of its planned participation as far as it is possible to set out when the notice was filed, and presents an itemized estimate of the compensation it expects to request in the amount of \$110,000. TURN fails to adequately explain the basis for a potential claim of \$200,000 for work to date in the federal bankruptcy proceeding and pre-investigation analysis, and TURN's compensation request for this portion of its work may reflect an unrealistic expectation. TURN should review Commission decisions that address the circumstances under which the Commission can compensate work done before other entities, and, in any subsequent compensation request, shall address whether or not those circumstances are met here.
3. The Foundation for Taxpayer and Consumer Rights (FTCR) has not yet demonstrated that it is a customer in Category 1, 2 or 3 for the purpose of



intervenor compensation. FTCCR may include a copy of its articles of incorporation or bylaws, plus an estimate of the percentage of its membership that are residential ratepayers, with its request for compensation, and at that time seek to be found a Category 3 customer. Alternatively, FTCCR may include with its request for compensation either facts that seek to establish that it is a Category 1 customer, or the name of each customer who authorizes FTCCR to be his or her representative, and at that time seek to be found either a Category 1 or 2 customer.

4. FTCCR states the nature and extent of its planned participation as far as it is possible to set out when the notice was filed, and presents an itemized estimate of the compensation it expects to request. FTCCR should review Commission decisions that address the circumstance under which the Commission can compensate work done before other entities, and, in any subsequent compensation request, shall address whether or not those circumstances are met here. FTCCR's compensation estimate may reflect an unrealistic expectation given that FTCCR's NOI did not included an adequate itemization of its compensation estimate between work performed before the Commission and work performed before other entities, and clear reasons that the circumstances under which the Commission can compensate work done before other entities apply here.

5. FTCCR has not demonstrated that participation will pose a significant financial hardship.

6. TURN and FTCCR demonstrate that they will represent interests that would otherwise be underrepresented and that their participation will not duplicate that of similar interests otherwise adequately represented. TURN and FTCCR shall address these factors in any subsequent compensation request, and failure

I.02-04-026 BWM/tcg

to do so will place TURN and FTCCR at risk for receiving reduced or no compensation.

7. TURN and FTCR show that their participation is necessary for a fair determination of the proceeding for their work before the Commission, but that participation may or may not include work before other entities.

Dated September 6, 2002, at San Francisco, California.

/s/ BURTON W. MATTSON

Burton W. Mattson  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Preliminary Ruling on NOIs to Claim Intervenor Compensation Filed by TURN and FCTR on all parties of record in this proceeding or their attorneys of record.

Dated September 6, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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